

**AGREEMENT BETWEEN  
THE ARIZONA WATER BANKING AUTHORITY  
AND THE HARQUAHALA VALLEY IRRIGATION DISTRICT  
PROVIDING FOR STORAGE OF CENTRAL ARIZONA PROJECT WATER  
AT A GROUNDWATER SAVINGS FACILITY**

1. The ARIZONA WATER BANKING AUTHORITY ("AWBA") and the Harquahala Valley Irrigation District ("Facility Operator") enter into this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2007.
2.
  - 2.1 The purpose of this Agreement is to provide for the storage of Central Arizona Project water, which the AWBA is legally entitled to store, at the Groundwater Savings Facility operated by the Facility Operator.
  - 2.2 The Parties recognize that this Agreement is one of a series of agreements entered into by the AWBA to provide for the storage of Central Arizona Project water. These agreements include the Intergovernmental Agreement among the Arizona Department of Water Resources, Arizona Water Banking Authority, and Central Arizona Water Conservation District, dated July 1, 2002, and the Agreement Between the Central Arizona Water Conservation District and the Arizona Water Banking Authority Providing for the Delivery of Excess Central Arizona Project Water, dated July 1, 2002. These agreements, in turn, are subject to certain agreements entered into by the Central Arizona Water Conservation District regarding the operation of the Central Arizona Project. These agreements include Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, between the United States and the Central Arizona Water Conservation District, and Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment upon the Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in Central Arizona Water Conservation District v. United States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action). The Parties to this Agreement recognize and agree that this Agreement is subject to the agreements referenced in this Section 2.2 and that in the event of any

inconsistency between this Agreement and agreements referenced, the provisions of the agreements referenced shall be controlling.

- 2.3 The Parties agree that the Central Arizona Water Conservation District shall have rights as a third party beneficiary to enforce certain provisions that are specified in this Agreement.
3. In this Agreement, the following terms shall have the following meanings:
  - 3.1 “ADWR” shall mean the Arizona Department of Water Resources.
  - 3.2 “Annual Operating Plan” (AOP) shall mean the plan approved by the AWBA for the delivery and storage of Authority Water during the year, as amended or modified by the AWBA.
  - 3.3 "Authority Water" shall mean water made available by CAWCD to the AWBA on an annual basis for underground storage pursuant to the terms of the Excess CAP Water Contract between the AWBA and CAWCD, which water would not otherwise have been used within Arizona.
  - 3.4 “CAP” shall mean the Central Arizona Project.
  - 3.5 “CAWCD” shall mean the Central Arizona Water Conservation District.
  - 3.6 “Facility” shall mean that groundwater savings facility operated by Harquahala Valley Irrigation District pursuant Groundwater Savings Facility Permit Number 72-593304.
  - 3.7 “Party or Parties” shall mean either one, or in the plural, both of the parties to this Agreement.
  - 3.8 Definitions specified in A.R.S. § 45-802.01 are applicable to this Agreement.  
The first letters of terms so defined are capitalized.
4. This Agreement shall terminate on December 31, 2011 unless the Parties agree in writing to extend the term or unless it is sooner terminated or cancelled in accordance with Section 13.

5. The delivery and use of water under this Agreement are conditioned on the following, and the Parties agree that:
  - 5.1 All uses of Authority Water shall be consistent with Arizona water law and with federal law applicable to the CAP.
  - 5.2 Authority Water made available pursuant to this Agreement shall be used only at the Facility for which the Facility Operator has obtained and continues to maintain Groundwater Savings Facility Permit No. 72-593304, or modifications or renewals of that permit. The Facility Operator shall be responsible for all expenses and administrative requirements, including filing annual reports with the ADWR, associated with maintaining the Groundwater Savings Facility Permit. The Facility Operator's use of Authority Water at such Facility shall at all times comply with the plan of operation of the Groundwater Savings Facility Permit. If such Groundwater Savings Facility Permit is cancelled or expires for any reason the Facility Operator shall immediately notify the AWBA and deliveries of Authority Water to the Facility Operator may, at the option of the AWBA, be discontinued immediately. The Facility Operator shall notify the AWBA if it files an application with the ADWR to amend its Groundwater Savings Facility permit.
  - 5.3 Authority Water made available to the Facility Operator pursuant to this Agreement shall be used within the Facility for Water Storage purposes only.
  - 5.4 The Facility Operator shall cause the pumping of groundwater within the Facility to be reduced by one acre-foot for each one acre-foot of Authority Water received at the Facility.
  - 5.5 The Facility Operator shall submit to the AWBA a monthly report of water use. The monthly report shall be in a form and submitted within a time, which is acceptable to the AWBA and shall contain a report of water use by amount and type of water used.

- 5.6 The AWBA shall obtain a Water Storage Permit from the ADWR to store water at the Facility prior to storing Authority Water at the Facility. The AWBA shall be responsible for all expenses and administrative requirements, including filing annual reports with the ADWR, associated with maintaining the Water Storage Permit.
6. 6.1 On or before September 1, the Facility Operator shall consult with the AWBA and provide a written projection of the Facility Operator's water use by type and amount for each month of the following year, which the AWBA may use to develop its annual operating plan for the following year.
- 6.2 On or before December 31, the AWBA shall return to the Facility Operator a final water delivery schedule based on the AWBA's AOP for the following year.
- 6.3 The AWBA shall authorize the Facility Operator to order Authority Water for delivery to the Facility directly from CAWCD in accordance with CAWCD water ordering procedures and the AOP.
- 6.4 The amounts, times and rates of delivery of Authority Water to the Facility Operator during any year shall be in accordance with the AOP. Authority Water ordered by the Facility Operator shall not exceed the amounts provided for in the AOP, unless approved in writing by the Authority.
- 6.5 Monthly water deliveries may be amended upon the Facility Operator's written request to CAWCD with copy to the AWBA. Proposed amendments shall be submitted by the Facility Operator to CAWCD with copy to the AWBA not less than fifteen (15) days before the desired change is to become effective, and shall be subject to review and modification by CAWCD and the AWBA.

- 6.6 The Facility Operator shall hold the AWBA and CAWCD, their officers, agents, and employees, harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with water delivery schedules furnished by or to the Facility Operator.
- 7. 7.1 The AWBA may reduce or discontinue deliveries of Authority Water to the Facility Operator under this Agreement in one or more of the following events:
  - 7.1.1 The Facility Operator fails to file the monthly report(s) required by Section 5.5.
  - 7.1.2 The Facility Operator violates the permit or plan of operation associated with the Facility or takes any action that threatens the AWBA's ability to accrue Long-Term Storage Credits for Authority Water delivered to the Facility.
- 7.2 The AWBA shall notify the Facility Operator of any determination to reduce or discontinue deliveries of Authority Water to the Facility Operator.
- 8. 8.1 On or before October 15 of each year, the AWBA shall notify the Facility Operator of the cost for each acre-foot of Authority Water to be delivered under this Agreement for the following year ("Facility Operator's Contribution").
- 8.2 The Facility Operator shall pay CAWCD directly for all water delivered under this Agreement. On or before the first day of each month, the Facility Operator shall pay CAWCD the amounts due as the Facility Operator's Contribution for Authority Water scheduled for delivery during that month.

- 8.3 The Facility Operator shall pay CAWCD in advance all amounts due as the Facility Operator's Contribution for Authority Water scheduled for delivery under this Agreement; however, CAWCD has agreed to reimburse the Facility Operator for any portion of the Facility Operator's Contribution which is attributable to Authority Water scheduled for delivery that is not subsequently delivered to the Facility Operator or to provide an equivalent credit against payment in the future of any fees owed CAWCD by the Facility Operator, should the Facility Operator so desire. CAWCD shall not be required to deliver water scheduled under this Agreement if the Facility Operator is in arrears in payment of any charges due CAWCD for a period of 60 days or more.
- 8.4 CAWCD shall be entitled, as a third party beneficiary to this Agreement, to collect from the Facility Operator any charges for water owed under this Section 8, along with interest, administrative and penalty charges on delinquent installments or payments, in accordance with the following:
- 8.4.1 The Facility Operator shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Facility Operator shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Facility Operator shall pay an additional penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the due date. Further, the Facility Operator shall pay any fees incurred for debt collection services associated with a delinquent payment.

- 8.4.2 The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent (0.5%) per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.
- 8.4.3 When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty and administrative charges, second, to the accrued interest, and third to the overdue payment.
- 8.5 No later than March 31 of the year following the storage of Authority Water by the Facility Operator or upon the submittal of the annual report for the previous year, the Facility Operator shall remit to ADWR \$2.50 for every acre-foot of water pumped or received by rightholders participation in the Facility including Authority Water used in-lieu of pumped groundwater. This \$2.50 shall be remitted in-lieu of the groundwater withdrawal fees collected by AWBA for groundwater pumped in the Active Management Areas. The annual report shall include a copy of the Rightholders' and the Permittee's Annual Groundwater Withdrawal and Use Report indicating the Recipient's total groundwater pumping for the year and the amount of groundwater pumped by each well operated by the Rightholders and the Recipient.
- 8.6 If the AWBA is not given Long-Term Storage Credits because the Facility Operator has violated the Groundwater Savings Facility Permit or plan of operation, the Facility Operator shall pay to the AWBA any water service charges paid by the AWBA to CAWCD for the water delivered to the Facility,

which did not accrue Long-Term Storage Credits. The payment shall be made within 90 days of the denial of Long-Term Storage Credits by the ADWR.

9. 9.1 Nothing in this Agreement shall be construed as an allocation of water to the Facility Operator, nor shall this Agreement entitle the Facility Operator to any water other than as provided herein.
- 9.2 Nothing in this Agreement shall be construed as requiring the AWBA to provide Authority Water to the Facility Operator in any year, and nothing in this Agreement shall be construed as requiring the Facility Operator to accept deliveries of Authority Water in any year. The Parties agree that in any year in which the AWBA desires to provide Authority Water to the Facility Operator and in which the Facility Operator agrees to accept deliveries of Authority Water, the terms and conditions of this Agreement shall apply.
10. Neither the AWBA nor CAWCD warrant the quality of any water furnished under this Agreement and neither is under any obligation to construct or furnish water treatment facilities to maintain or improve the quality of any water. The Facility Operator waives its right to make a claim against the AWBA or CAWCD on account of the quality of water or any changes in water quality caused by the commingling of water delivered under this Agreement with other water.
11. 11.1 The Parties agree that the AWBA may designate a third party agent to exercise the right to recover the AWBA's water stored under this Agreement. The "Designated Recovery Agent" shall be CAWCD, a political subdivision of the State of Arizona, and/or a municipal corporation formed under the laws of the State of Arizona. The AWBA shall, in



accordance with Section 15 of this Agreement, notify the Facility Operator of the appointment of a Designated Recovery Agent pursuant to this Section 11.

- 11.2 The Facility Operator agrees to cooperate with the Designated Recovery Agent in facilitating the recovery of Long-Term Storage Credits stored by the AWBA at the Facility. Facility Operator agrees that the AWBA or its designated representative may enter onto lands owned or controlled by the Facility Operator for the purposes of recovering water stored pursuant to this Agreement and transporting the recovered water to the CAP canal.
- 11.3 The Parties agree that another agreement shall be entered into between the Parties or between Facility Operator and the AWBA's designated representative that shall specify the terms and conditions by which the water stored pursuant to this Agreement shall be recovered and delivered to the CAP canal. Such agreement may provide that the Facility Operator enter into agreements with owners of wells within the Facility Operator's boundaries to procure access to those wells for the Designated Recovery Agent for the purposes of recovering AWBA water stored at the Facility. The Facility Operator shall provide to the AWBA a description of wells and well sites which the Designated Recovery Agent could utilize for recovery purposes, including the necessary authorization for Facility Operator's use of such wells and well sites, within 30 days of entering into each such agreement.
- 11.4 If no such subsequent agreement can be reached between the Parties, the AWBA or its designated representative may nonetheless exercise the authority granted it by the Facility Operator in Subsection 11.2 and may enter onto lands owned or controlled by the Facility Operator in the vicinity of the Facility for the purposes of recovering water stored pursuant to this

Agreement and transporting the recovered water to the CAP canal. In the event no subsequent agreement is reached and the AWBA or its designated representative enters onto land owned or controlled by the Facility Operator in the vicinity of the Facility, the amount of reasonable compensation payable to Facility Operator, if any, for such entry shall be determined by mutual consent and shall be paid to Facility Operator by the AWBA or its designated representative.

- 11.5 The Facility Operator agrees not to register any objection with the ADWR to an application for a recovery well permit filed by the Designated Recovery Agent or other entities seeking to recover water stored by the AWBA so long as the water is to be recovered at the Facility at which it was stored.
- 11.6 If agreements for access to wells have been procured under Section 11.2 and upon the distribution of Long-Term Storage Credits by the AWBA to a Designated Recovery Agent, the Designated Recovery Agent may, at the Designated Recovery Agent's sole expense, recover the Long-Term Storage Credits at the Facility using those wells upon written notification to the Facility Operator.
- 11.7 The Designated Recovery Agent shall not recover Long-Term Storage Credits within the Facility Operator's boundaries that were not accrued by the AWBA at the Facility, unless the Facility Operator agrees in writing to allow the Designated Recovery Agent to recover other Long-Term Storage Credits.
- 11.8 The Designated Recovery Agent shall be responsible for obtaining and maintaining recovery well permits and shall pay all permit fees and other costs and expenses of any nature associated with recovery of Long-Term Storage Credits at the Facility.
- 11.9 The Facility Operator does not warrant the quality of water produced from recovery wells and is under no obligation to construct or furnish water

treatment facilities to maintain or improve the quality of such water. The Designated Recovery Agent shall not make a claim against the Facility Operator because of changes in water quality caused by underground storage or the mixing of recovered water with other water.

- 11.10 It is the express intention of the Parties that the Designated Recovery Agent be a third party beneficiary of the obligations and duties of the provisions of this Section 11, and that the third party beneficiary shall be considered a “Party” only for the purposes of this Section 11. The rights of the third party beneficiary under this Section 11 shall vest immediately upon notification to the Facility Operator by the AWBA of the designation of a Designated Recovery Agent in accordance with this Section 11. The Parties agree that the terms of this Section 11 shall not, in any way, limit the rights or privileges of the AWBA under this Agreement.
- 11.11 The obligations set forth in this Section 11 shall survive the expiration or termination of this Agreement and remain in full force and effect until all Authority Water stored at the Facility has been recovered.
12. 12.1 Authority Water furnished to the Facility Operator pursuant to this Agreement shall be delivered only to the Facility Operator at such point(s) that have previously been approved by CAWCD and only if CAWCD has satisfied itself that the pipelines, canals, distribution systems, or other conduits that will convey Authority Water after delivery will prevent excessive conveyance losses and are constructed, operated, and maintained in accordance with any condition of applicable laws, regulations or order and to the satisfaction of CAWCD.
- 12.2 In the event of damage to CAP facilities due to failure of the Facility Operator to operate in a good and workmanlike manner, the Facility Operator shall pay

the CAWCD within thirty (30) days of the Facility Operator's receipt of a statement for the costs of repairing any damage to Project facilities or Project rights-of-way caused by or arising out of the Facility Operator's activities under this Agreement.

- 12.3 All Authority Water delivered to the Facility shall be measured with equipment furnished and installed by the United States and operated and maintained by CAWCD. Upon the request of the Facility Operator, the AWBA, or CAWCD, the accuracy of such measurements shall be investigated by CAWCD and the Facility Operator, and any errors which are mutually determined to have occurred therein shall be adjusted; however, in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be conclusive.
- 12.4 The United States, CAWCD, and the AWBA shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the Facility Operator's Project delivery point. The Facility Operator shall hold the United States, CAWCD, and the AWBA harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water beyond the Facility Operator's Project delivery point.
- 12.5 The AWBA shall not be liable for any action taken by CAWCD or the Facility Operator pursuant to this Section 12 regarding the construction, operation, or maintenance of connection facilities.
- 12.6 Deliveries of water scheduled under this Agreement are subject to interruption and discontinuance due to investigation, inspection, construction, testing, maintenance, repair or replacement of the CAP and its components. The Facility Operator also acknowledges that CAP water available to the

AWBA is only that water which would otherwise be unused in Arizona and, therefore, deliveries of water scheduled under this Agreement are subject to interruption and discontinuance due to insufficient water or delivery capacity to deliver all other waters scheduled for delivery through the CAP. The United States, its officers, agents, and employees, CAWCD, its officers, agents and employees, and the AWBA, its officers, agents, and employees shall not be liable for any damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in delivery of water scheduled under this Agreement occurs.

13. 13.1 This Agreement may be terminated for any of the following reasons:

- 13.1.1 If the Facility Operator remains in arrears in the payment of the Facility Operator's Contribution for ninety (90) days or more, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator;
- 13.1.2 If the Facility Operator remains in arrears in the reimbursement of any portion of the AWBA's contribution for thirty (30) days or more, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator and CAWCD;
- 13.1.3 If the excess water contract between the AWBA and CAWCD providing for delivery of Authority Water is terminated, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator; or

- 13.1.4 if the AWBA determines in its sole discretion that the Facility Operator is operating the Facility in a manner contrary to law or in a manner which is likely to jeopardize the ability of the AWBA to earn Long-Term Storage Credits for Authority Water delivered to the Facility for the benefit of the AWBA, the AWBA may terminate this Agreement, which termination shall be effective ten (10) days after mailing written notice of termination to the Facility Operator and CAWCD.
- 13.2 The Parties' and CAWCD's rights under this Agreement to collect any monies owed under the Agreement shall survive the termination of this Agreement.
- 13.3 The rights of the AWBA to terminate this Agreement as provided in this Section 13 shall be in addition to all other rights of the AWBA under this Agreement and as provided by law.
- 14. The Facility Operator shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including: the Facility Operator's water supply data, water-use data, and other matters that the AWBA or CAWCD may require. Reports thereon shall be furnished to the AWBA or CAWCD in such form and on such date or dates as the AWBA or CAWCD may require. Subject to applicable federal and state laws and regulations, each party to this Agreement shall have the right during office hours to examine and make copies of each other party's books and records relating to matters covered by this Agreement.

15. Any notice, demand, or request authorized or required by this Agreement shall be in writing and shall be deemed to have been duly given if mailed, first class postage prepaid, or delivered to the parties at the following addresses:

If to the AWBA:

Manager  
Arizona Water Banking Authority  
3550 North Central Ave.  
Phoenix, AZ 85012

If to the Facility Operator:

Manager  
Harquahala Valley Irrigation District  
402 South Harquahala Valley Road  
Tonopah, AZ 85354

If to Legal Counsel for Harquahala Valley Irrigation District:

Ellis & Baker, P.C.  
7301 N. 16<sup>th</sup> Street, Suite 102  
Phoenix, AZ 85020

The designation of the address or addressee for the giving of notice may be changed by notice given as provided in this Section 15.

16. The parties shall comply with Chapter 9, Title 41, Arizona Revised Statutes, Arizona Executive Orders 75-5 and 99-4 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.
17. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any interest therein shall be valid unless and until approved in writing by the AWBA.

18. This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective the day and year first above-written.

**ARIZONA WATER BANKING AUTHORITY**

Attest:\_\_\_\_\_

Secretary

By:\_\_\_\_\_

Chairman

**HARQUAHALA VALLEY IRRIGATION DISTRICT**

Attest:\_\_\_\_\_

Secretary

By:\_\_\_\_\_

President

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